

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2313

(Reference to printed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 11-445, Arizona Revised Statutes, is amended to read:

11-445. Fees chargeable in civil actions by sheriffs, constables and private process servers; authority of private process servers; background investigation; constables' logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.

2. For summoning each witness, sixteen dollars.

3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.

4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.

5. For endorsing the forfeiture of any bond required to be endorsed by him, twelve dollars.

6. For levying each execution, twenty-four dollars.

7. For returning each execution, sixteen dollars.

8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.

9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.

10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen

1 dollars except that posting for a writ of restitution shall not exceed ten
2 dollars.

3 11. For executing a deed to each purchaser of real property under
4 execution or order of sale, twenty-four dollars.

5 12. For executing a bill of sale to each purchaser of real and personal
6 property under an execution or order of sale, when demanded by the purchaser,
7 sixteen dollars.

8 13. For services in designating a homestead or other exempt property,
9 twelve dollars.

10 14. For receiving and paying money on redemption and issuing a
11 certificate of redemption, twenty-four dollars.

12 15. For serving and returning each writ of garnishment and related
13 papers, forty dollars.

14 16. For the preparation, including notarization, of each affidavit of
15 service or other document pertaining to service, eight dollars.

16 17. For every writ served on behalf of a justice of the peace, a fee
17 established by the board of supervisors not to exceed five dollars per
18 writ. Monies collected from the writ fees shall be deposited in the
19 constable ethics standards and training fund established by section 22-138.

20 B. The sheriff shall also collect the appropriate recording fees if
21 applicable and other appropriate disbursements.

22 C. The sheriff may charge:

23 1. Fifty-six dollars plus disbursements for any skip tracing services
24 performed.

25 2. A reasonable fee for executing a civil arrest warrant ordered
26 pursuant to court rule by a judge or justice of the peace. The fee shall
27 only be charged to the party requesting the issuance of the civil arrest
28 warrant.

29 3. A reasonable fee for storing personal property levied on pursuant
30 to title 12, chapter 9.

31 D. For traveling to serve or on each attempt to serve civil process,
32 writs, orders, pleadings or papers, the sheriff shall receive two dollars
33 forty cents for each mile actually and necessarily traveled but, in any
34 event, not to exceed two hundred miles, nor to be less than sixteen
35 dollars. Mileage shall be charged one way only. For service made or

1 attempted at the same time and place, regardless of the number of parties or
2 the number of papers so served or attempted, only one charge for travel fees
3 shall be made for such service or attempted service.

4 E. For collecting money on an execution when it is made by sale, the
5 sheriff and the constable shall receive eight dollars for each one hundred
6 dollars or major portion thereof not to exceed a total of two thousand
7 dollars, but when money is collected by the sheriff without a sale, only
8 one-half of such fee shall be allowed. When satisfaction or partial
9 satisfaction of a judgment is received by the judgment creditor after the
10 sheriff or constable has received an execution on the judgment, the
11 commission is due the sheriff or constable and is established by an affidavit
12 of the judgment creditor filed with the officer. If the affidavit is not
13 lodged with the officer within thirty days of the request, the commission
14 shall be based on the total amount of judgment due as billed by the officer
15 and may be collected as any other debt by that officer.

16 F. The sheriff shall be allowed for all process issued from the
17 supreme court and served by the sheriff the same fees as are allowed the
18 sheriff for similar services on process issued from the superior court.

19 G. The constable shall receive the same fees as the sheriff for
20 performing the same services in civil actions, except that mileage shall be
21 computed from the office of the justice of the peace originating the civil
22 action to the place of service.

23 H. Notwithstanding subsection G of this section, in a county with a
24 population of more than three million persons, if an office of a justice of
25 the peace is located outside of the precinct boundaries, the mileage for a
26 constable shall be calculated pursuant to subsection D of this section,
27 except that the distance between the precinct boundaries and the office of
28 the justice of the peace, as determined by the county and certified by the
29 board of supervisors of that county, shall be subtracted from the mileage
30 calculation. This certified mileage calculation shall be transmitted to the
31 justice courts and the clerks of those courts shall calculate the mileage
32 between the office of the justice of the peace and the location where the
33 civil process, writ, order, pleading or paper was served and reduce the
34 mileage used to calculate the mileage fee according to the certified mileage
35 calculation for that respective jurisdiction.

1 I. Private process servers duly appointed or registered pursuant to
2 rules established by the supreme court may serve all process, writs, orders,
3 pleadings or papers required or permitted by law to be served before, during
4 or independently of a court action, including all such as are required or
5 permitted to be served by a sheriff or constable, except writs or orders
6 requiring the service officer to sell, deliver or take into the officer's
7 custody persons or property, or as may otherwise be limited by rule
8 established by the supreme court. A private process server is an officer of
9 the court AND IS SUBJECT TO THE SAME RIGHTS AND PRIVILEGES AFFORDED TO A
10 SHERIFF OR CONSTABLE WHILE EXECUTING THE DUTIES AUTHORIZED BY THIS SECTION
11 UNLESS OTHERWISE LIMITED BY LAW OR RULE ESTABLISHED BY THE SUPREME COURT. As
12 a condition of registration, the supreme court shall require each private
13 process server applicant to furnish a full set of fingerprints to enable a
14 criminal background investigation to be conducted to determine the
15 suitability of the applicant. The completed applicant fingerprint card shall
16 be submitted with the fee prescribed in section 41-1750 to the department of
17 public safety. The applicant shall bear the cost of obtaining the
18 applicant's criminal history record information. The cost shall not exceed
19 the actual cost of obtaining the applicant's criminal history record
20 information. Applicant criminal history records checks shall be conducted
21 pursuant to section 41-1750 and Public Law 92-544. The department of public
22 safety is authorized to exchange the submitted applicant fingerprint card
23 information with the federal bureau of investigation for a federal criminal
24 records check. A private process server may charge such fees for services as
25 may be agreed on between the process server and the party engaging the
26 process server.

27 J. Constables shall maintain a log of work related activities
28 including a listing of all processes served and the number of processes
29 attempted to be served by case number, the names of the plaintiffs and
30 defendants, the names and addresses of the persons to be served except as
31 otherwise precluded by law, the date of process and the daily mileage.

32 K. The log maintained in subsection I of this section is a public
33 record and shall be made available by the constable at the constable's office
34 during regular office hours. Copies of the log shall be filed monthly with

1 the clerk of the justice court and with the clerk of the board of
2 supervisors.

3 Sec. 2. Section 13-1204, Arizona Revised Statutes, is amended to read:

4 13-1204. Aggravated assault; classification; definition

5 A. A person commits aggravated assault if the person commits assault
6 as prescribed by section 13-1203 under any of the following circumstances:

7 1. If the person causes serious physical injury to another.

8 2. If the person uses a deadly weapon or dangerous instrument.

9 3. If the person commits the assault by any means of force that causes
10 temporary but substantial disfigurement, temporary but substantial loss or
11 impairment of any body organ or part or a fracture of any body part.

12 4. If the person commits the assault while the victim is bound or
13 otherwise physically restrained or while the victim's capacity to resist is
14 substantially impaired.

15 5. If the person commits the assault after entering the private home
16 of another with the intent to commit the assault.

17 6. If the person is eighteen years of age or older and commits the
18 assault on a child who is fifteen years of age or under.

19 7. If the person commits assault as prescribed by section 13-1203,
20 subsection A, paragraph 1 or 3 and the person is in violation of an order of
21 protection issued against the person pursuant to section 13-3602 or 13-3624.

22 8. If the person commits the assault knowing or having reason to know
23 that the victim is any of the following:

24 (a) A peace officer, or a person summoned and directed by the officer
25 while engaged in the execution of any official duties.

26 (b) A constable, or a person summoned and directed by the constable
27 while engaged in the execution of any official duties.

28 (c) A firefighter, fire investigator, fire inspector, emergency
29 medical technician or paramedic engaged in the execution of any official
30 duties, or a person summoned and directed by such individual while engaged in
31 the execution of any official duties.

32 (d) A teacher or other person employed by any school and the teacher
33 or other employee is on the grounds of a school or grounds adjacent to the
34 school or is in any part of a building or vehicle used for school purposes,
35 any teacher or school nurse visiting a private home in the course of the

1 teacher's or nurse's professional duties or any teacher engaged in any
2 authorized and organized classroom activity held on other than school
3 grounds.

4 (e) A health care practitioner who is certified or licensed pursuant to
5 title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the
6 licensed health care practitioner while engaged in the person's professional
7 duties. This subdivision does not apply if the person who commits the
8 assault is seriously mentally ill, as defined in section 36-550, or is
9 afflicted with alzheimer's disease or related dementia.

10 (f) A prosecutor.

11 (g) A DULY APPOINTED OR REGISTERED PRIVATE PROCESS SERVER WHILE ENGAGED
12 IN THE EXECUTION OF ANY OFFICIAL DUTIES.

13 9. If the person knowingly takes or attempts to exercise control over
14 any of the following:

15 (a) A peace officer's or other officer's firearm and the person knows
16 or has reason to know that the victim is a peace officer or other officer
17 employed by one of the agencies listed in paragraph 10, subdivision (a), item
18 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the
19 execution of any official duties.

20 (b) Any weapon other than a firearm that is being used by a peace
21 officer or other officer or that the officer is attempting to use, and the
22 person knows or has reason to know that the victim is a peace officer or
23 other officer employed by one of the agencies listed in paragraph 10,
24 subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is
25 engaged in the execution of any official duties.

26 (c) Any implement that is being used by a peace officer or other
27 officer or that the officer is attempting to use, and the person knows or has
28 reason to know that the victim is a peace officer or other officer employed
29 by one of the agencies listed in paragraph 10, subdivision (a), item (i),
30 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution
31 of any official duties. For the purposes of this subdivision, "implement"
32 means an object that is designed for or that is capable of restraining or
33 injuring an individual. Implement does not include handcuffs.

34 10. If the person meets both of the following conditions:

1 (a) Is imprisoned or otherwise subject to the custody of any of the
2 following:

3 (i) The state department of corrections.

4 (ii) The department of juvenile corrections.

5 (iii) A law enforcement agency.

6 (iv) A county or city jail or an adult or juvenile detention facility
7 of a city or county.

8 (v) Any other entity that is contracting with the state department of
9 corrections, the department of juvenile corrections, a law enforcement
10 agency, another state, any private correctional facility, a county, a city or
11 the federal bureau of prisons or other federal agency that has responsibility
12 for sentenced or unsentenced prisoners.

13 (b) Commits an assault knowing or having reason to know that the
14 victim is acting in an official capacity as an employee of any of the
15 entities listed in subdivision (a) of this paragraph.

16 B. Except pursuant to subsections C and D of this section, aggravated
17 assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,
18 subdivision (a) of this section is a class 3 felony except if the victim is
19 under fifteen years of age in which case it is a class 2 felony punishable
20 pursuant to section 13-705. Aggravated assault pursuant to subsection A,
21 paragraph 3 of this section is a class 4 felony. Aggravated assault pursuant
22 to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section
23 is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph
24 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6
25 felony.

26 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
27 this section committed on a peace officer while the officer is engaged in the
28 execution of any official duties is a class 2 felony. Aggravated assault
29 pursuant to subsection A, paragraph 3 of this section committed on a peace
30 officer while the officer is engaged in the execution of any official duties
31 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
32 8, subdivision (a) of this section resulting in any physical injury to a
33 peace officer while the officer is engaged in the execution of any official
34 duties is a class 5 felony.

35 D. Aggravated assault pursuant to:

1 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony
2 if committed on a prosecutor.

3 2. Subsection A, paragraph 3 of this section is a class 3 felony if
4 committed on a prosecutor.

5 3. Subsection A, paragraph 8, subdivision (f) of this section is a
6 class 5 felony if the assault results in physical injury to a prosecutor.

7 E. For the purposes of this section, "prosecutor" means a county
8 attorney, a municipal prosecutor or the attorney general and includes an
9 assistant or deputy county attorney, municipal prosecutor or attorney
10 general."

11 Amend title to conform

and, as so amended, it do pass

ADAM DRIGGS
Chairman

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3/5/09
H:jmb